Supreme Court, U.S.
FILED

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No. 02-

IN THE
SUPREME COURT OF THE UNITED STATES

LEOCADE LEIGHTON,
Petitioner

v.

VIRGINIA DEPARTMENT OF HEALTH,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF VIRGINIA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Leighton has been deprived of a property interest without due process of law, in violation of the Fourteenth Amendment, because the Court of Appeals of Virginia held that, under the Virginia Administrative Process Act, she was not "aggrieved" by a decision of the Virginia Department of Health affecting her ownership of real property and thus denied her judicial review.

PARTIES TO PROCEEDING

The parties to the proceeding are Leocade Leighton (hereinafter "Leighton") and the Virginia Department of Health (hereinafter "Department").

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OPINIONS BELOW

The Order of the Supreme Court of Virginia denying a Petition for Appeal is printed in the Appendix ("App.") at App. 1a. The Opinion of the Court of Appeals of Virginia is unpublished and is at App. 2a. The final Order of the Circuit Court of Fauquier County is not reported and is at App. 10a. The Memorandum Opinion of the Circuit Court of Fauquier County is not reported and is at App. 13a.

JURISDICTION

The Supreme Court of Virginia denied the Petition for Appeal on October 23, 2002. On January 16, 2003, the Chief Justice extended the time to file this petition until February 20, 2003. This Court has jurisdiction under 28 U.S.C. § 1254(l).

CONSTITUTIONAL PROVISION

U.S. Const., Amend. 14: "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ."

STATEMENT OF THE CASE

(i) Proceedings in the Courts Below

On January 14, 2000, Leighton filed a Petition for Appeal in the Circuit Court of Fauquier County, Virginia from a decision of the Department with respect to the interpretation and application of its regulations. On January 11, 2001, Judge Thomas D. Horne of the Circuit Court of Fauquier County issued a Memorandum Opinion finding that Leighton had standing, modifying the Department's decision in part, affirming the Department's decision in part, but declining to enforce the court's interpretation of the Department's regulations. App. 13a, 15a-16a. On April 19, 2001, Judge Horne issued a final

Order dismissing the appeal. App. 10a. Leighton timely appealed to the Court of Appeals of Virginia, which, in an unpublished opinion of June 11, 2002, affirmed the dismissal, but for different reasons. App. 2a, 3a. In particular, the Court of Appeals held that Leighton was not a party "aggrieved" within the meaning of the Virginia Administrative Process Act (VAPA), Code § 9-6.14:1 through § 9-6.14:25.[1] App. 9a. Leighton timely appealed to the Supreme Court of Virginia, which refused her Petition for Appeal by order of October 23, 2002. App. 1a.

Statement of Facts

In or about 1970, Leighton purchased, and has owned since, a single lot of real property in Fauquier County, Virginia. The property was described in the deed by reference to a plat and is one of five (5) properties on the plat. In or about 1990, in other litigation to which Leighton was party, *Leighton* v. *Board of Supervisors of Fauquier County*, Chancery No. 7902, the Circuit Court of Fauquier County determined that the plat was unlawful, and thus void, because it had been approved in violation of a county subdivision ordinance. The circuit court also found that, because the plat was void, Leighton's property would be unmarketable as clear title could not be given. Leighton, the other four property owners, and the Defendant Board of Supervisors agreed that the five property owners would apply to the County for resubdivision of the land to cure the problems with the plat.

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[1] Effective October 1, 2001, the VAPA was recodified in Code § 2.2-4000 through § 2.2-4033.

In preparing to obtain approval from the County of a new subdivision plat, it was discovered that the sewage disposal system on one of the other lots (the Gibson lot) could adversely affect such approval. Leighton thus requested both an informal and adjudicatory hearing before the Department. She asserted in her hearing request that the original Department permit approving a drainfield on the Gibson lot violated the Department's regulations in that the drainfield was too near the well and that there was a shed built on the drainfield. She also asserted that the boundary line proposed for the Gibson lot would encroach upon the minimum set-back provided for in the Department's regulations.

An informal hearing was held on October 27, 1999 before Dr. James E. Burns, M.D., the District Health Director, who concluded, in a written decision dated November 22, 1999, that there was no violation of the Department's regulations either with respect to the location of the drainfield relative to the well or with respect to the shed built on the drainfield. With respect to the set-back for the drainfield, the District Health Director concluded that the issue was moot as there was no property line then extant (due to the voiding of the plat).

Leighton timely filed a Petition for Appeal in the Circuit Court of Fauquier County, Virginia from the decision of the Department on January 14, 2000. The Department demurred to Leighton's Petition, arguing that she did not have standing to appeal to the circuit court, that she was not a party to the original permit approving the drainfield, that she was not an aggrieved party within the meaning of the VAPA and thus had no standing to initiate an administrative appeal, and that she was not an "aggrieved owner" under the regulations and thus had no

standing to circuit court review. The Department also contended that it had correctly decided the issues on the merits.

On January 11, 2001, Judge Horne issued a Memorandum Opinion finding that Leighton had standing, modifying the Department's decision in part, affirming the Department's decision in part, but declining to enforce the court's interpretation of the Department's regulations. App. 15a-16a. In particular, the court held that Leighton had standing because the court had previously:

> found that the subdivision in which Ms. Leighton, the Gibsons and other residents was void in its inception. . . .
>
> Although Ms. Leighton is not the owner of the lot and parcel occupied by Mr. And Mrs. Gibson, she is a person affected by the proper application of the health department regulations with respect to the siting of the drainfield. A failure to comply with applicable subdivision regulations does not prevent, ". . . the recordation of the instrument by which such land is transferred or the passage of title as between the parties to the instrument." Va. Code Ann. § 15.2-2254(3). However, a failure to properly subdivide the parcel may impede future plat approval and places significant limitations on the use of the property by the owner. *Leake, et al.* v. *Casati, et. al.*, 234 Va. 646 (1988). . . .

> [Ms. Leighton's] use and enjoyment of her property is limited by the need for the approval of a subdivision that conforms to county requirements.

App. 15a.

On the merits, the circuit court stated:

> The Court finds that the provisions of the regulations in effect at the time the drainfield was approved control the locating of the well on the Gibson's property. It matters not whether the digging of the well preceded or followed the construction of the drainfield. To the extent the commissioner's finding differ from that of the Court's, it is so modified. When the drainfield was the constructed, there had been no special exception cited to the regulation in effect, that would support a variance upon a showing of an absence of evidence of a threat to public health or the environment. Similarly, the grandfather provisions of a later regulation cannot be used to give perpetual existence to an activity, where the life of the permit sought to be continued is specifically limited in time.

App. 16a.

Nonetheless, the circuit court held that it would:

> affirm the remaining findings of Dr. Burns. This

> Court may not compel the Health Department to commence proceedings against the Gibson's or the original applicant, and declines to do so. Similarly, this Court finds that the enforcement of the regulations is a matter resting within the sound discretion of the Health Department. Although this Court may exercise oversight of this case, it may not subdivide the property and will not mandate the steps required to obtain subdivision approval.

App. 16a.

On April 19, 2001, Judge Horne issued a final Order incorporating the findings of the Memorandum Opinion and dismissing the appeal. App. 11a. Leighton timely appealed to the Court of Appeals of Virginia, which, in an unpublished opinion of June 11, 2002, affirmed the dismissal, but for different reasons. App. 2a, 3a. In particular, the Court of Appeals held that Leighton was not a party aggrieved within the meaning of the VAPA because:

> Leighton established no "direct," "immediate, pecuniary, and substantial interest" in the Department's decision. The effect, if any, of Gibson's existing sewage system upon a forthcoming resubdivision plat is clearly speculative and conjectural and, thus, "remote or indirect" with respect to Leighton.

App. 9a.

Leighton timely appealed to the Supreme Court of Virginia, which refused her Petition for Appeal by order of October 23, 2002. App. 1a.

ARGUMENT

THE COURT OF APPEALS OF VIRGINIA DEPRIVED LEIGHTON OF A PROPERTY INTEREST WITHOUT DUE PROCESS OF LAW

The Fourteenth Amendment provides in part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ." Leighton has a property interest in her real property of which she has been deprived without due process of law.

Property Interest: As discussed above, the plat on which Leighton's property was described was unlawful, and thus void, because it had been approved in violation of a county subdivision ordinance. Due to the invalidation of the plat which included Leighton's property, she is unable to market her property and has thus been deprived of a property interest.

This Court has long recognized that "the right to sell property as just one element of the owner's property interest." *Keystone Bituminous Coal Assn v. DeBenedictis,* 480 U.S. 470, 500 (1987).

Leighton's inability to sell her property arises from state law. In particular, Virginia Code § 15.2-2254(3) provides in relevant part:

> No person shall sell or transfer any land of a subdivision, before a plat has been duly approved and recorded as provided herein . . . .

Moreover, Virginia Code § 55-48 requires that a deed "describe the property . . . ." A deed description is sufficient "if it is possible, by any reasonable rules of construction, to ascertain from the description, aided by extrinsic evidence, what property it is intended to convey." *Midkiff v. Glass*, 139 Va. 218, 225 (1924). A "'description of land as a numbered lot or block on a certain plat is sufficiently definite . . . .'" *Matney v. Cedar Land Farms*, 216 Va. 932, 936 (1976). As Leighton's property is described in a plat and that plat is void, Leighton's property cannot be sold or transferred and she is deprived of property interest by state law.

Process Which Is Due: As Leighton has been deprived of a property interest by state law, she must be accorded due process to challenge that deprivation. "[T]he Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged." *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982).

The judgment of the Court of Appeals of Virginia affirming the dismissal of Leighton's petition for judicial review of the decision of the Department has denied Leighton the opportunity to present her case and have its merits fairly judged.[2] In particular, by holding that Leighton was not

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[2] Although the Circuit Court of Fauquier County had accorded Leighton a proper forum, the action of the Court of Appeals of Virginia deprived her of that forum and invalidated the relief she had obtained.

aggrieved, the Court of Appeals of Virginia denied Leighton a judicial forum in which she could present her contentions that the Department had misapplied its regulations. The Court of Appeals of Virginia has thus decided an important federal question in a way that conflicts with relevant decisions of this Court.

In *Anderson Nat. Bank* v. *Luckett*, 321 U.S. 233 (1944), this Court held that the process due in a procedure affecting property interests:

> must be determined by taking into account the purposes of the procedure and its effect upon the rights asserted and all other circumstances which may render the proceeding appropriate to the nature of the case.

321 U.S. at 246.

Similarly, in *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 313 (1950), this Court held that the Due Process Clause requires a "hearing appropriate to the nature of the case." Moreover, the Due Process Clause requires an opportunity for a hearing "which must be granted . . . in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

In the case at bar, the issues at the informal hearing concerned the proper interpretation of the Department's regulations. The District Health Director who held the hearing was a medical doctor. The hearing, moreover, was informal. Thus, while the hearing may have been appropriate for the

development of a factual record, it was not appropriate for the final resolution of the legal issues which were at the heart of the case. Only a judicial forum could meaningfully provide a proper forum for the resolution of those issues.

This Court has previously addressed whether the Due Process Clause requires judicial review. In *Anderson Nat. Bank*, *supra*, this Court held:

> [I]t is not an indispensable requirement of due process that every procedure affecting the ownership or disposition of property be *exclusively* by judicial proceeding. Statutory proceedings affecting property rights, which, *by later resort to the courts*, secure to adverse parties an opportunity to be heard, suitable to the occasion, do not deny due process. Familiar examples are the decisions and orders of administrative agencies which determine rights subject to a subsequent judicial review.

321 U.S. at 246-47 (emphasis added).

Thus, when property rights are affected, resort to the courts must be allowed, if not *ab initio*, at least following an administrative determination.

In contemporaneous case, *Yakus* v. *United States*, 321 U.S. 414 (1944), this Court observed:

> There is no constitutional requirement that that test be made in one tribunal rather than in

> another, *so long as there is an opportunity to be heard and for judicial review* which satisfies the demands of due process, as is the case here.

321 U.S. at 444 (emphasis added).[3]

In *Ewing v. Mytinger & Casselberry*, 339 U.S. 594 (1950), the Court held:

> It is sufficient, where only property rights are concerned, that there is at some stage an opportunity for a hearing *and a judicial determination*.

339 U.S. at 599 (emphasis added).

Thus, judicial review is a necessary requirement of the Due Process Clause, a conclusion which is especially true where the issues to be resolved are legal questions.

In the instant case, while Leighton was initially accorded judicial review when the circuit court determined she had standing, the decision of the Court of Appeals of Virginia deprived her of that forum. Had the Court of Appeals of Virginia not concluded that Leighton was not aggrieved, that court would have addressed the merits of the legal issues raised on the appeal. By concluding that Leighton was not

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[3] See also *Lujan v. G & G Fire Sprinklers, Inc.*, 532 U.S. 189, 197 (2001)("[I]f California makes ordinary judicial process available to respondent for resolving its contractual dispute, that process is due process.").

"aggrieved," the Court of Appeals of Virginia deprived Leighton of a property interest without due process of law.

CONCLUSION

Because the Court of Appeals of Virginia has decided an important federal question in a way that conflicts with relevant decisions of this Court, this Court should grant this petition for a writ of certiorari to review the judgment of the Court of Appeals of Virginia.

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